



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R04-OAR-2017-0422; FRL-9990-68-Region 4]**

#### **Air Plan Approval; NC; Emission Control Standards, Open Burning, and Miscellaneous Revisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of a revision to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environmental Quality (formerly the North Carolina Department of Environment and Natural Resources (NCDENR)), Division of Air Quality, on January 31, 2008. The revision includes changes to emission control standards and open burning regulations. The changes are part of North Carolina's strategy to meet and maintain the national ambient air quality standards (NAAQS). This action is being taken pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0422 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information

you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Nacosta C. Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Ward can be reached via telephone at (404) 562-9140, or via electronic mail at ward.nacosta@epa.gov.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On January 31, 2008, the State of North Carolina, through NCDENR,<sup>1</sup> submitted changes to the North Carolina SIP for EPA approval. EPA is proposing to approve changes to the following regulations under 15A North Carolina Administrative Code (NCAC) 02D, Section .0519, *Control of Nitrogen Dioxide and Nitrogen Oxides Emissions*; Section .0540, *Particulates From Fugitive Non-Process Dust Emissions*; and Section .1907, *Multiple Violations Arising From a Single Episode*.<sup>2</sup> These changes are a part of North Carolina's strategy to attain and

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<sup>1</sup> NCDENR is now the North Carolina Department of Environmental Quality.

<sup>2</sup> In the table of North Carolina regulations federally approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02D

maintain the NAAQS and are being proposed for approval pursuant to section 110 of the CAA. EPA has taken, will take, or, for various reasons, will not take separate action on all other changes submitted on January 31, 2008.<sup>3</sup>

## **II. Analysis of the State Submittals**

The revision that is the subject of this proposed rulemaking makes changes to emission control standard regulations under Subchapter 2D of the North Carolina SIP. These changes revise the applicability of nitrogen dioxide (NO<sub>2</sub>) and nitrogen oxides emissions standards to nitric acid plants, amend definitions and expand the applicability of provisions related to fugitive dust emissions, and add a new open burning rule for multiple violations that can occur from a single open burning event. The changes either do not interfere with attainment and maintenance of the NAAQS or they have the effect of strengthening the North Carolina SIP. Detailed descriptions of the changes are below:

1. Section .0519, *Control of Nitrogen Dioxide and Nitrogen Oxides Emissions* is amended by removing the provision to limit NO<sub>2</sub> emissions from nitric acid manufacturing plants. This regulation covers existing nitric acid manufacturing plants only, and the provision limiting NO<sub>2</sub> emissions from sulfuric acid manufacturing plants remains unchanged. The provision limiting NO<sub>2</sub> emissions from existing nitric acid manufacturing plants is removed because at the time of the regulations changes there were no nitric acid plants in

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is referred to as “Subchapter 2D Air Pollution Control Requirements.”

<sup>3</sup> On February 5, 2015 (80 FR 6455), EPA took final action on 2D Section .1004. On July 18, 2017 (82 FR 32767), EPA took direct final action on 2D Sections .1901, .1902 and .1903. EPA will be taking separate action on 15A NCAC Sections 2D .1904 and 2Q .0102. EPA is not taking action on 2D Sections .0516 and .0521, because the changes to these rules reference incinerator rules under CAA sections 111(d) and 129 and 40 CFR part 60 and are not a part of the federally-approved SIP. EPA is not taking action on changes to 2Q Section .0506 because the changes reference a regulation not approved into the SIP. Lastly, EPA is not taking action on changes to 2D Sections .0524, .0960, .1201, .1202, .1208, .1211, and .2303 because the State withdrew these regulations from its January 31, 2008, submittal.

the State (nor are there any currently operating in the State). Section .0519 is also amended by adding a provision clarifying that boilers subject to emission standards under regulations under Subchapter 2D of the North Carolina SIP, Sections .0524, *New Source Performance Standards* or .1418, *New Generating Units, Large Boilers and Internal Combustion Engines*, must meet the requirements of those regulations instead of the requirements in Section .0519. To demonstrate that this change does not interfere with the maintenance and attainment of the NAAQS, North Carolina submitted a noninterference demonstration supporting this change to its SIP on April 11, 2017.<sup>4</sup> North Carolina confirmed in its noninterference demonstration that there are currently no nitric acid plants operating in the State, and any new nitric acid plants with affected boilers or engines will be required to comply with the New Source Performance Standards or new generating units, large boilers and internal combustion engines Sections at .0524 and .1418 that are more stringent than the standards being removed. EPA is proposing to find that the rationale in North Carolina's noninterference demonstration sufficiently establishes that the revisions to Section .0519 will not interfere with attainment and maintenance of the NAAQS pursuant to CAA section 110(l).<sup>5</sup>

2. Section .0540, *Particulates From Fugitive Non-Process Dust Emissions* is amended to make the Section applicable to *all* fugitive dust emissions instead of only fugitive *non-process* dust emissions. Section .0540 requires that the owner or operator of a facility shall not cause or allow fugitive dust emissions to cause or contribute to substantive complaints or visible emissions in excess of prescribed levels. Preliminarily, EPA views

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<sup>4</sup> This noninterference demonstration is a part of the docket for this action.

<sup>5</sup> Section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act.

the expanded applicability of Section .0540 as SIP strengthening. To effectuate this expanded applicability, the substitution of the term “fugitive non-process dust emissions” with “fugitive dust emissions” has been made throughout the Section to reflect this change. Other changes to this regulation are as follows:

- The title has been changed from “*Particulates From Fugitive Non-Process Dust Emissions*” to “*Particulates From Fugitive Dust Emission Sources*;”
- The term “fugitive non-process dust emissions” has been modified to eliminate “non-process,” and the corresponding definition has been modified;
- The terms “excess fugitive dust emissions,” “production of crops,” and “public parking,” along with definitions thereof, have been added, and the definitions have been renumbered to reflect these additions;
- A provision clearly identifying certain activities that are excluded from the regulation’s expanded applicability has been added under paragraph (b). These activities include: abrasive blasting covered under Subchapter 2D Section .0541; cotton ginning operations covered under Subchapter 2D Section .0542; non-production military base operations; land disturbing activities; and public roads, public parking, timber harvesting, or production of crops. As a preliminary matter, EPA believes the exclusion of these activities from the expanded applicability of .0540 does not result in the North Carolina SIP being less stringent. This is because, in the current North Carolina SIP, these activities are already not subject to the requirements of Section .0540 due to the fact that applicability of the current SIP-approved regulation is limited to non-process fugitive dust emissions from only four specified source categories and the

activities now proposed for explicit exclusion in the new version of the regulation were effectively excluded under the old regulation.

- The requirements related to substantive complaints regarding fugitive dust emissions from facilities have been revised to provide clarity to the requirements that an owner or operator must meet in order to comply with the regulation. The regulation is amended by adding an objective method (reference method 22) for determining opacity at the property boundary to assist inspectors in application of the regulation. The regulation is also amended to include the processes that need to be followed when excess fugitive emissions substantive complaints are received.

As noted above, the current SIP-approved version of Section .0540 applies to only four source categories that reference regulation Section .0540 regarding control of non-process fugitive dust emissions: Section .0506, *Hot Mix Asphalt Plants*; Section .0509, *Mica or Feldspar Processing Plants*; Section .0510, *Sand, Gravel, or Crushed Stone Operations*; and Section .0511, *Light Weight Aggregate Processes*. The amendments to the regulation now expand its applicability to require sources with no permit, and that are not subject to one of the aforementioned four categories, to abate fugitive dust that is due to poor collection and/or control systems or non-process fugitive emissions. The focus of the regulation is no longer limited to non-process fugitive emissions, and the amendments eliminate any differentiation between fugitive non-process and fugitive process emissions.

The other major change to the regulation includes the addition of reference method 22 for visible emissions determination. Compliance with the regulation was previously determined by the presence of physical evidence to verify a complaint (i.e., dust that must be attributed solely to

a source). The addition of reference method 22 allows an inspector to determine compliance based on any opacity at the property boundary that occurs more than six minutes in an hour and includes all fugitive dust. The amendments also include the processes that need to be followed when excess fugitive emissions or two (or more) substantive complaints are received. The amendment requires immediate abatement measures for identified fugitive dust emission sources within 30 days and permanent plans for fugitive dust abatement within 90 days (60 days from the first report).

EPA has preliminarily determined that the changes to Section .0540 have the effect of strengthening the SIP by covering both process and non-process fugitive dust from facilities subject to an emission standard or a permit, whereas the current SIP-approved version of the regulation applies only to non-process fugitive dust from four source categories. EPA also believes, as a preliminary matter, that the amendments related to the specified exclusions do not make the SIP less stringent because the excluded activities were already effectively excluded under the old regulation. The changes also provide clarity to definitions, exclusions, and the requirements applicable to substantive complaints. For the reasons noted above, EPA is proposing approval of the changes to this regulation and proposing to find that these amendments to Section .0540 and the revisions to the SIP satisfy CAA section 110(l) and do not interfere with attainment and maintenance of the NAAQS or any other applicable requirement of the Act.

3. Section .1907, *Multiple Violations Arising From a Single Episode* is a new open burning regulation being added to the North Carolina SIP. North Carolina added this provision to allow assessment of multiple civil penalties with respect to a single open burning event because multiple violations may occur during a single episode. EPA believes, as a preliminary matter, that this new regulation is SIP-strengthening and on this basis EPA is

proposing approval of North Carolina's request to add this regulation to its SIP.

### **III. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the North Carolina regulations under Subchapter 2D Air Pollution Control Requirements, Section .0519, *Control of Nitrogen Dioxide and Nitrogen Oxides Emissions*; Section .0540, *Particulates From Fugitive Dust Emission Sources*; and Section .1907, *Multiple Violations Arising from a Single Episode*, which had a state effective date of July 1, 2007. These changes are proposed to revise the applicability of NO<sub>2</sub> and nitrogen oxides emissions standards to nitric acid plants, amend definitions and the applicability of provisions related to fugitive dust emissions, and add a new open burning rule for multiple violations that can occur from a single open burning event. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

### **IV. Proposed Action**

For the reasons described above, EPA is proposing to approve the aforementioned changes to the North Carolina SIP submitted by the State of North Carolina on January 31, 2008, pursuant to section 110 because these changes are consistent with the CAA.

### **V. Statutory and Executive Order Reviews:**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,



provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 25, 2019.

Mary S. Walker,

Acting Regional Administrator,

Region 4.

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